IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.4975 of 2008

Date of decision : 05.09.2016

Sarjeet

......Appellant

Versus

Kamlesh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Mani Ram Verma, Advocate for appellant.
None for respondent No.1.
Mr. Sandeep Suri, Advocate for respondent No.2.

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DARSHAN SINGH, J.

The present appeal has been preferred by by the appellant-claimant against the award dated 10.09.2008, passed by learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter called the “Tribunal”) vide which the appellant-claimant has been awarded compensation to the tune of Rs.2,71,000/- on account of the injuries suffered by him in the motor vehicular accident, which took place on 15.05.2006.

2. The present appeal has been preferred by the appellant-claimant for enhancement of award of compensation.

3. Notice was issued to respondent No.1 and the same was received back with the report of refusal. Thereafter, service upon respondent No.1 was effected by way of affixation.

4. I have heard learned counsel for the parties and have gone

through the paper-book carefully.

5. Initiating the arguments, learned counsel for the appellant contended that the learned Tribunal has wrongly determined the income of the claimant only to be Rs.2100/- per month. Even a casual labourer at that time could have easily earned Rs.4000/- per month. He further contended that consequently, the compensation awarded to the appellant for permanent disability is highly inadequate. He further contended that he has not awarded any compensation on account of loss of amenity and enjoyment of life. He further contended that the learned Tribunal has wrongly awarded the interest from the date of award. It should have been awarded from the date of filing the claim petition, which is the general practice.

6. On the other hand, Mr. Sandeep Suri, Advocate, learned counsel for respondent-Insurance Company contended that the income of the appellant-claimant has been rightly taken to be Rs.2100/- per month by the learned Tribunal as there was no documentary evidence to establish his income and profession. He further contended that the learned Tribunal has assessed the compensation on account of permanent disability by taking into consideration his income and by applying the multiplier. Thus, he contended that the compensation awarded to the appellant-claimant is just and appropriate.

7. I have duly considered the aforesaid contentions.

8. As per the case of the appellant-claimant, he was an agriculturist and was also running the milk dairy. He used to earn Rs.18,000/- per month. The learned Tribunal discarded the plea of the

appellant-claimant that he was running the milk dairy or he was working as a potter. Thus, the learned Tribunal has considered him an unskilled labourer and determined his income to be Rs.2100/- per month. However, the income so taken by the learned Tribunal is on the lower side as even an unskilled labourer at that time could have easily earned Rs.120/- per day. So, the income of the appellant-claimant shall be taken to be Rs.3500/- per month *i.e.* Rs.42,000/- per annum.

9. As per the disability certificate Ex.P15, the claimant has suffered 70% permanent disability on account of amputation of his left arm below elbow. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1,*** has laid down that loss of future earning cannot be assessed on the basis of percentage of the permanent disability but that has to be assessed on the basis of percentage of functional disability *i.e.* effect or impact of such permanent disability on his earning capacity. In that case the claimant has suffered 45% permanent disability but the Hon'ble Apex Court has considered the permanent functional disability to the extent of 25% and loss of future earning capacity as 20%. In view of the aforesaid ratio of law laid down by Hon'ble Apex Court, though the appellant-claimant has suffered 70% disability, but only 40% of his disability shall be taken to be his functional disability having impact on his future earning capacity. The suitable multiplier has to be applied in order to compute the compensation. As per disability certificate Ex.P15, appellant-claimant was 38 years old at the time of the accident. So, the multiplier of 15 shall be applicable. Thus, the amount of compensation on account of loss

of future earning capacity due to permanent disability comes to Rs.2,52,000/- (42,000 X 40 X 15 / 100). So, the compensation under this head is enhanced to Rs.2,52,000/- from Rs.2,16,000/-.

10. Learned Tribunal has also not awarded any compensation to the claimant on account of loss of amenity and enjoyment of life. The appellant-claimant has lost his left arm below elbow, which will certainly effect his amenity and enjoyment of life permanently. So, he will be entitled to a sum of Rs.1,00,000/- under this head.

11. In this way, the enhanced amount of compensation payable to the claimant is detailed as under:-

Sr. No.	**Heads of compensation**	**Amount of compensation awarded by the Tribunal** ***(in rupees)***	**Amount of compensation enhanced by this Court** ***(in rupees)***
1.	Cost of treatment	15,000	15,000 *(no change)*
2.	Special diet and transportation	15,000	15,000 *(no change)*
3.	Loss of income due to permanently disability	2,16,000	2,52,000
4.	Pain and suffering	25,000	25,000 *(no change)*
5.	Loss of amenity and enjoyment of life	-	1,00,000
	Total	**2,71,000**	**4,07,000**

12. In this way, the appellant-claimant shall be entitled to a total some of Rs.4,07,000/-.

13. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellant-claimant is enhanced to Rs.4,07,000/- from Rs.2,71,000/- as awarded by the Tribunal.

14. The learned Tribunal has awarded the interest to the appellant @ 7% per annum from the date of passing the award till realisation by relying upon case ***Charanjit Kaur and others Vs. Prem Singh and others 2007(2) PLR (Civil) 545***. I have gone through the said judgment. In that case the interest was granted only from the date of award in view of the facts and circumstances of that case, otherwise it is a general practice that the interest is awarded from the date of institution of the claim petition and, there is nothing to depart the said general practice in the present case. Thus, the appellant-claimant shall be entitled to interest @ 7% per annum on the original award of amount as well as enhanced amount from the date of institution of the claim petition till realisation.

15. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

05.09.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No